

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

REGINALD WATSON,

Plaintiff,

v.

DEPARTMENT OF SOCIAL
SERVICES,

Defendant.

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No. 4:09-CV-1438 DDN

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Reginald Watson for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff’d 826 F.2d 1059 (4th Cir. 1987).

The Complaint

Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). The named defendant is the Missouri Department of Social Services. Plaintiff says that he requested records from defendant that pertain to the termination of his employment with the Department. Plaintiff’s only cause of action is under the FOIA.

Discussion

The complaint is frivolous because the FOIA does not apply to state agencies. 5 U.S.C. § 551 (“‘agency’ means each authority of the Government of the United States”); 5 U.S.C. § 552; e.g., Davidson v. Georgia, 622 F.2d 895, 897 (5th Cir. 1980) (“the Freedom of Information Act has no application to state governments”). As a result, the complaint will be dismissed under 28 U.S.C. § 1915(e). Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis is **GRANTED**. [Doc. 2]

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 15th day of September, 2009.